

IN RE MILL CREEK SALVAGE TIMBER SALE

IBLA 91-457

Decided December 18, 1991

Appeal from a decision of the Umpqua (Oregon) Resource Area Manager, Coos Bay District, Bureau of Land Management, denying a protest against the Mill Creek Salvage Timber Sale, Tract No. 91-318.

Affirmed.

1. Contests and Protests: Generally--Rules of Practice: Appeals: Statement of Reasons

A decision by BLM may be summarily affirmed where the statement of reasons filed in support of an appeal fails to point out error in the decision under review but instead merely reiterates arguments addressed to BLM in a protest and where the BLM decision on the protest is comprehensive and fully addresses each of the arguments contained in the protest.

APPEARANCES: Mark Hubbard, Projects Coordinator, Oregon Natural Resources Council, Eugene, Oregon, for appellant; Terry A. Richards, Umpqua Area Manager, North Bend, Oregon, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

The Oregon Natural Resources Council (ONRC) has appealed from a July 25, 1991, decision of the Umpqua (Oregon) Resource Area Manager, Coos Bay District, Bureau of Land Management (BLM), denying a protest against the Mill Creek Salvage Timber Sale (Tract No. 91-318). This sale requires removal by helicopter of approximately 513 trees blown down in a windstorm during the winter of 1990 on three parcels totaling 20 acres adjacent to areas in a prior sale, the Mill Creek Ridge Timber Sale, TS88-3. Standing trees were to be left uncut, and much of the material blown down would remain on the ground. A decision record and finding of no significant environmental impact with respect to the sale were approved on March 18 and 19, 1991.

BLM published notice of the sale on March 28, and ONRC filed a timely protest against the sale on April 10. ONRC filed an addendum to the protest on April 12. The sale was offered at an oral auction on April 26. On May 10, W. F. Logging, Inc., submitted a bid for the minimum amount

acceptable to BLM, \$53,172.00, and was notified of the acceptance of its bid by letter dated July 31. The contract was awarded on September 4. Meantime, BLM denied the ONRC protest on July 25, 1991.

ONRC gave notice of appeal from the July 25 decision, filed a "statement of reasons," and requested a stay of BLM action pending our review because this appeal involves a matter that is not subject to the automatic stay provided by 43 CFR 4.21(a). See 43 CFR 5003.3(f). Action on a request for stay in a case does not necessarily provide grounds for expediting disposition of the concurrent appeal, but when the review prompted by a stay request reveals the appeal to be either procedurally defective or lacking in merit, there is little point in withholding action on the case, and it therefore may be appropriate to dispose of the appeal immediately.

The protest made by ONRC prior to sale consisted of 14 pages listing 26 numbered reasons why the sale should not take place. In the July 25 decision denying the protest, BLM took care to respond to each of the numbered arguments appearing in the protest, many of which involved general objections to BLM's timber sale program and had little relevance to the particular sale at issue. 1/

The "statement of reasons" submitted by appellant on appeal does not address the July 25 decision. It is instead a virtual verbatim repetition of the numbered items appearing in the earlier protest and makes no attempt to point out how BLM may have erred in its decision on the protest. The only changes from the numbered items in appellant's protest appear to be the insertion of a new item with the number "9" and the renumbering of the remaining items from the protest. The "new" item 9, however, is a verbatim repetition of the addendum to the protest filed by ONRC on April 12. Indeed, the fact that ONRC included this item suggests that the BLM decision from which this appeal is taken may not have been read by ONRC. 2/ It was not, in any event, addressed by the statement of reasons filed.

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1/ Notably, the protest at page 11 and the statement of reasons at page 13 argued that the "average Bureau of Land Management timber sale, such as this one, involves cutting several million board feet, and thus removing almost the entire biomass on the site on environmentally valuable and sensitive Bureau of Land Management lands." (Emphasis added.) This allegation betrays ignorance of the nature of the sale, which involves removal of about 513 wind-cast trees only.

2/ In the Apr. 12 addendum to its protest, appellant referred to "a letter dated March 28, 1991 (attached)," in which the Oregon Department of Fish and Wildlife cautioned against salvage sales in spotted-owl management areas. (Emphasis added.) The BLM decision correctly pointed out that the letter was dated Mar. 28, 1990, and that the State agency had subsequently approved the Mill Creek salvage timber sale on June 27, 1990. Despite the fact that BLM's decision pointed out what was an apparent error in the statement of reasons filed in support of the protest to the sale, ONRC carried over the incorrect statement change from its Apr. 12

[1] The right of review provided by this Board is not intended to be a circular promenade in which the parties simply repeat their steps. We have repeatedly stated that an appellant is required to point out affirmatively why the decision under appeal is in error. Andre C. Capella, 94 IBLA 181 (1986); United States v. De Fisher, 92 IBLA 226 (1986); United States v. Reavely, 53 IBLA 320 (1981); United States v. Coppridge, 17 IBLA 323 (1974); United States v. Whittaker, 12 IBLA 279 (1973). In Shell Offshore, Inc., 116 IBLA 246, 250 (1990), we held that this requirement is not satisfied if the appellant "has merely reiterated the arguments considered by the [decisionmaker below], as if there were no decision \* \* \* addressing those points." BLM has provided a comprehensive decision fully addressing each of the allegations contained in the protest and appellant has not attempted to show any error in the decision. Under such circumstances, we may summarily affirm BLM's decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Franklin D. Arness  
Administrative Judge

I concur:

Bruce R. Harris  
Deputy Chief Administrative Judge

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fn. 2 (continued)

addendum and inserted it as item 9 in the statement of reasons filed with this Board, still referring to 1991 as the date of the letter and with no acknowledgement of the subsequent agreement to the sale by the State agency concerned.

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